

EXHIBIT 1

7/17/2019 9:15 AM
Marilyn Burgess - District Clerk Harris County
Envelope No. 35186839
By: Nancy Torres
Filed: 7/16/2019 4:59 PM

2019-48291 / Court: 234

NO. _____

ERICA FINISTER, AS NEXT FRIEND
OF A.E.
Plaintiff,

V.

BURGER KING CORPORATION,
BRANDON DUKES, HOUSTON FLY,
LLC AND HOUSTON FOODS, INC.
Defendants.

§ IN THE DISTRICT COURT
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§ OF HARRIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Erica Finister, as Next Friend of [REDACTED] hereinafter called Plaintiff, complaining of and about Burger King Corporation, Brandon Dukes, Houston Fly, LLC and Houston Foods, Inc., hereinafter called Defendants, and for cause of action shows unto the Court the following:

DISCOVERY CONTROL PLAN LEVEL

Plaintiff intends that discovery be conducted under Discovery Level 2.

PARTIES AND SERVICE

Plaintiff, Erica Finister, as next friend of [REDACTED] an Individual who resides in Harris County, Texas. brings this action as Next Friend of [REDACTED] an Individual. The last three numbers of Erica Finister's driver's license number are 185.

Defendant Burger King Corporation, a Nonresident Corporation, may be served pursuant to sections 5.201 and 5.255 of the Texas Business Organizations Code by serving the registered agent of the corporation, CT Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas 75201, its registered office. Service of said Defendant as described above can be effected by personal delivery.

Defendant Brandon Dukes, an Individual who is a resident of Texas, may be served with process at his home at the following address: 16805 Northern Flicker Trail, Conroe, Texas 77385, or wherever he may be found. Service of said Defendant as described above can be effected by personal delivery.

Defendant Houston Fly, LLC, a Limited Liability Company based in Texas, may be served with process by serving the registered agent of said company, Shoukat Dhanani, at 4415 Highway 6, Sugar Land, Texas 77478, its registered office. Service of said Defendant as described above can be effected by personal delivery.

Defendant Houston Foods, Inc., a Corporation based in Texas, is organized under the laws of the State of Texas, and service of process on the Defendant may be effected pursuant to sections 5.201 and 5.255 of the Texas Business Organizations Code, by serving the registered agent of the corporation, Shoukat Dhanani, at 4415 Highway 6, Sugar Land, Texas 77478, its registered office. Service of said Defendant as described above can be effected by personal delivery.

JURISDICTION AND VENUE

The subject matter in controversy is within the jurisdictional limits of this court. Plaintiff seeks monetary relief over \$1,000,000. This court has jurisdiction over Defendant Burger King Corporation, because said Defendant purposefully availed itself of the privilege of conducting activities in the state of Texas and established minimum contacts sufficient to confer jurisdiction over said Defendant, and the assumption of jurisdiction over Burger King Corporation will not offend traditional notions of fair play and substantial justice and is consistent with the constitutional requirements of due process. Plaintiff would show that Defendant Burger King Corporation had continuous and systematic contacts with the state of Texas sufficient to establish

general jurisdiction over said Defendant. Plaintiff would also show that the cause of action arose from or relates to the contacts of Defendant Burger King Corporation to the state of Texas, thereby conferring specific jurisdiction with respect to said Defendant.

Venue in Harris County is proper in this cause under Section 15.002(a)(3) of the Texas Civil Practice and Remedies Code because this county is the county of the principal office of Houston Foods, Inc., Defendant herein. Furthermore, because venue is proper with respect to Defendant Houston Foods, Inc., venue for this action with respect to all Defendants is proper under 15.005 of the Texas Civil Practice and Remedies Code.

FACTS

At all times relevant herein, [REDACTED] was employed at Burger King, owned and operated by Burger King Corporation, Houston Fly, LLC and Houston Foods, Inc. On or about February 2, 2018, [REDACTED] was in the employee break room when Defendant Brandon Dukes approached [REDACTED] and sexually assaulted her. Two other co-workers were present, one of whom recorded the incident and posted it on Snapchat, the other co-worker being a relative of the store manager. After immediately reporting the incident to the manager on duty, she was told it "was not his business" and to go back to work. [REDACTED] reported the incident to police, and as of the filing of this petition charges are still pending.

[REDACTED] made a formal complaint to her employer. After the complaint was made, Defendants Burger King Corporation, Houston Fly, LLC and Houston Foods, Inc. significantly reduced [REDACTED] hours to only one day per week. Subsequently, another co-worker, apparently upset over the fact that [REDACTED] reported the incident, threatened to shoot [REDACTED] while both were working for Defendants Burger King Corporation, Houston Fly, LLC and Houston Foods, Inc. The police were called due to this incident as well.

Defendants Burger King Corporation, Houston Fly, LLC and Houston Foods, Inc. did nothing to protect [REDACTED] from further assaults while under their employ, but rather retaliated against her for reporting the incidents by significantly reducing her work hours. Further, Defendants Burger King Corporation, Houston Fly, LLC and Houston Foods, Inc. failed to correct the intimidating, hostile and offensive working environment [REDACTED] was forced to endure. Defendants Burger King Corporation, Houston Fly, LLC and Houston Foods, Inc. discriminated against [REDACTED] due to her gender and race, and retaliated against her for reporting each instance of assault, harassment and intimidation by fellow employees. As a result, [REDACTED] was constructively discharged from her position.

[REDACTED] CLAIM FOR DISCRIMINATION AND RETAILIATION

Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully written herein. This claim is an action for gender discrimination pursuant to 42 U.S.C. § 2000e et seq. (Title VII of the Civil Rights Act of 1964) as amended by the Civil Rights Act of 1991, Texas Labor Code § 21.051 and Retaliation under Texas Labor Code § 21.055. Defendant Houston Foods, Inc. is an “employer” engaged in an industry affected commerce as defined by 42 U.S.C. § 2000e (b). [REDACTED] instituted a complaint with the Equal Employment Opportunity Commission, which has issued her a Right to Sue letter.

[REDACTED] an African American female, has been the subject of a disparate and hostile work environment on the basis of her race and sex, and then retaliated against by her employer when she made a complaint. Defendants engaged in intentional racial and gender discrimination, resulting in [REDACTED] constructive discharge. Defendants’ discriminatory conduct has caused Plaintiff damages. Defendants’ actions have caused Plaintiff to suffer mental and emotional distress, entitling her to compensatory damages pursuant to 42 U.S.C. § 1981a.

Defendants have engaged in discriminatory practices with malice and reckless indifference to Plaintiff's federally protected rights, thereby entitling them to punitive damages pursuant to 42 U.S.C. § 1981a.

CLAIM FOR ASSAULT

Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully written herein. Defendant Dukes, acted intentionally, knowingly or recklessly when he assaulted Plaintiff. Defendants and their employees directed and allowed Plaintiff to be physically assaulted by another employee. Defendants, and/or their employees, made actual, physical contact with Plaintiff, without her consent, which caused damages to Plaintiff.

CLAIM FOR NEGLIGENCE

Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully written herein. Defendants Burger King Corporation, Houston Fly, LLC and Houston Foods, Inc. owed a legal duty to Plaintiff to provide adequate security and a safe working environment. Defendants Burger King Corporation, Houston Fly, LLC and Houston Foods, Inc. had actual knowledge of the potential danger Plaintiff could be subjected to at any given time.

Defendants Burger King Corporation, Houston Fly, LLC and Houston Foods, Inc. breached their legal duty to Plaintiff by failing to provide her adequate security, failing to provide a safe working environment and failing to remedy harmful and dangerous situations of which they were aware. Defendants' Burger King Corporation, Houston Fly, LLC and Houston Foods, Inc. breach proximately caused Plaintiff injury, including physical harm, and mental anguish.

██████████ CLAIM FOR NEGLIGENT HIRING AND NEGLIGENT SUPERVISION

Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully written herein. Defendants Burger King Corporation, Houston Fly, LLC and Houston Foods, Inc. owed Plaintiffs a legal duty to hire, supervise, train and retain competent employees. Defendants Burger King Corporation, Houston Fly, LLC and Houston Foods, Inc. breached these duties to Plaintiff when it hired Dukes and other employees, failed to train those employees, and failed to properly supervise those employees. Defendants' Burger King Corporation, Houston Fly, LLC and Houston Foods, Inc. breach of their duties proximately caused Plaintiffs to suffer injuries.

DAMAGES FOR INJURED PARTY ANIYA EARLY

As a direct and proximate result of the occurrence made the basis of this lawsuit, the subject of this lawsuit, ██████████, was caused to suffer severe injuries, and to incur compensatory and actual damages including, but not limited to reasonable and necessary medical expenses and mental anguish. Plaintiff also seeks exemplary damages.

REQUESTS FOR DISCLOSURE

Pursuant to Texas Rule of Civil Procedure 194, Plaintiff request that Defendants disclose the information or material described in Rule 194.2.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Erica Finister, as Next Friend of ██████████, respectfully prays that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendants, jointly and severally, for damages in an amount within the jurisdictional limits of the Court; together with pre-judgment interest at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such other and further relief to which the Plaintiff may be

entitled at law or in equity.

Respectfully submitted,

Spurlock & Associates, P.C.

By: 

Kimberley M. Spurlock
Texas Bar No. 24032582
Email: kspurlock@spurlocklaw.com
17280 West Lake Houston Pkwy.
Humble, TX 77346
Tel. (281) 548-0900
Fax. (281) 446-6553
Attorney for Plaintiff
Erica Finister, as Next Friend of Aniya Early

PLAINTIFF HEREBY DEMANDS TRIAL BY JURY

RECEIPT NUMBER 0.00

TRACKING NUMBER 73647323 CIV

CAUSE NUMBER 201948291

PLAINTIFF: FINISTER, ERICA (ANF AXXX EXXXX) (MINOR)

vs.

DEFENDANT: BURGER KING CORPORATION

In The 234th
Judicial District Court of
Harris County, Texas

CITATION CORPORATE

THE STATE OF TEXAS
County of HarrisTO: BURGER KING CORPORATION (NON RESIDENT CORPORATION) MAY BE SERVED BY
SERVING THE REGISTERED AGENT CT CORPORATION SYSTEM
1999 BRYAN ST SUITE 900 DALLAS TX 75201

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION.

This instrument was filed on the 16th day of July, 2019, in the
above cited cause number and court. The instrument attached describes the claim against you.YOU HAVE BEEN SUED; you may employ an attorney. If you or your attorney do not file a written answer with the
District Clerk who issued this citation by 10:00 a.m on the Monday next following the expiration of 20 days after you were
served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This Citation was issued under my hand and seal of said Court, at Houston, Texas, this 18th day of
July, 2019.Issued at request of:
SPURLOCK, KIMBERLEY M
17280 WEST LAKE HOUSTON
PARKWAY
HUMBLE, TX 77346
TEL: (281) 548-0900
Bar Number: 24032582MARILYN BURGESS, District Clerk
Harris County, Texas
201 Caroline, Houston, Texas 77002
P.O. Box 4651, Houston, Texas 77210

Generated by: TORRES, NANCY N7F//11277640

OFFICER/AUTHORIZED PERSON RETURN

I received this citation on the _____ day of _____, 20____, at _____ o'clock ____M., endorsed
the date of delivery thereon, and executed it at _____ (STREET ADDRESS), _____ (CITY),
in _____ County, Texas on the _____ day of _____, 20____, at _____ o'clock ____M.,
by delivering to _____ (THE DEFENDANT CORPORATION NAMED IN CITATION), by delivering to its
_____, in person, whose name is _____ (REGISTERED AGENT, PRESIDENT, or VICE-PRESIDENT),
a true copy of this citation, with a copy of the _____ (DESCRIPTION OF PETITION, E.G., "PLAINTIFFS ORIGINAL") Petition attached,
and with accompanying copies of _____ (ADDITIONAL DOCUMENTS, IF ANY, DELIVERED WITH THE PETITION).

I certify that the facts stated in this return are true by my signature below on the _____ day of _____, 20____.

FEE: \$ _____

By: _____ (SIGNATURE OF OFFICER)

Printed Name: _____

Affiant Other Than Officer _____

As Deputy for: _____ (PRINTED NAME & TITLE OF SHERIFF OR CONSTABLE)

On this day, _____, known to me to be the person whose signature
appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was
executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____, 20____

Notary Public

234th District Court of HARRIS County, Texas

201 CAROLINE, 13TH FL HOUSTON TX 77002

CASE #: 201948291

ERICA FINISTER, AS NEXT FRIEND OF A.E

Plaintiff

VS

BURGER KING CORPORATION, BRANDON DUKES, HOUSTON FLY, LLC AND HOUSTON FOODS, INC.

Defendant

AFFIDAVIT OF SERVICE

I, SHERI RHODES-JOHNSON, make statement to the fact;
That I am a competent person more than 18 years of age or older and not a party to this action, nor interested in outcome of the suit. That I received the documents stated below on 07/29/19 9:55 am, instructing for same to be delivered upon BURGER KING CORPORATION By Delivering To Its Registered Agent CT Corporation System.

That I delivered to : BURGER KING CORPORATION By Delivering To Its Registered Agent CT Corporation System. By Delivering to ANTOINETTE WILLIAMS, INTAKE SPECIALIST

the following : CITATION; PLAINTIFF'S ORIGINAL PETITION

at this address : 1999 Bryan St. Suite 900
Dallas, Dallas County, TX 75201

Manner of Delivery : By PERSONALLY delivering the document(s) to the person above.

Delivered on : Monday July 29, 2019 12:04 pm

My name is SHERI RHODES-JOHNSON, my date of birth is August 14th, 1977, and my address is Professional Civil Process Dallas, Inc., 2300 Valley View Ln, Ste 612, Irving TX 75062, and U.S.A. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Tarrant County, State of Texas, on the 29 day of

July, 2019.

SHERI RHODES-JOHNSON
2760

Declarant

Texas Certification#: PSC-10551 Exp. 09/30/2019

PCP Inv#: A19704292

RO Inv#: D19700264



AX02A19704292

braddock
eaffidavits@pcpusa.net

+ Service Fee: 75.00
Witness Fee: .00
Mileage Fee: .00

Spurlock, Kimberly

E-FILE RETURN